



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

DEC 2 2003

**NOTICE OF POTENTIAL LIABILITY AND CERCLA 104(e) INFORMATION  
REQUEST  
URGENT LEGAL MATTER; PROMPT REPLY REQUESTED**

**Via Certified Mail**

Ms. Sandi VanWormer, Esq.  
Dow Chemical Company  
Environmental and Superfund Matters  
2030 Dow Center  
Midland, MI 48674

Re: Notice of Potential Liability and Request for Information Pursuant to Section 104(e)(2) of  
CERCLA (42 U.S.C. Sec. 9604(e)(2))  
Gulfco Marine Maintenance, Inc.  
City of Freeport, Brazoria County, Texas

Dear Ms. VanWormer:

Thank you for responding to the Information Request the U.S. Environmental Protection Agency ("EPA") sent to you on July 9, 2003, in connection with the Gulfco Marine Maintenance Superfund Site located in Freeport, Brazoria County, Texas ("Site"). We received your response letter dated September 26, 2003, in which you stated that Dow used Hercules Offshore Drilling Company to clean barges used by Dow, that Dow used Fish Engineering and Construction to clean and repair barges, and that Dow used Gulfco to clean barges. Based on your response, and other available information, EPA has determined that you are a Potentially Responsible Party ("PRP") at the Site, and may be responsible under the Superfund law (also known as the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, 42 U.S.C. §§ 9601-9675) for cleanup of the Site, or costs incurred by EPA in cleaning up the Site.

**NOTICE OF POTENTIAL LIABILITY**

The EPA has determined that hazardous substances were released into the environment at the Site. The EPA has already undertaken response actions consisting of a Preliminary Assessment and Site Inspection, the preparation of a Hazard Ranking System Documentation Record, and certain enforcement activities.

Under Section 107 of CERCLA, 42 U.S.C. § 9607, responsible parties are those persons who are current owners or operators of the facility; past owners or operators who owned or operated the facility at the time hazardous substances were disposed of at the facility; persons who arranged for disposal or treatment of hazardous substances at the facility (usually the person(s) who generated the hazardous substances); or persons who selected the facility and transported the hazardous substances to the facility. Section 107 of CERCLA, 42 U.S.C. § 9607, states that responsible parties are liable to the United States for the costs incurred in a removal and/or remedial action conducted by the EPA.

If you believe that EPA has made an error in identifying you as a PRP for this Site, please provide information supporting your position. In addition, if you are aware of the names and whereabouts of other former owners and operators of the Site, as well as potential generators and transporters of hazardous waste to the Site, please provide that information to EPA.

To assist you in working with EPA concerning this matter, EPA is providing the following information as Enclosures to this letter:

- (a) List of Parties Receiving Notice of Potential Liability Letters (Enclosure "A")
- (b) Information Request (Enclosure "B")

## **SITE BACKGROUND**

The Site encompasses 40 acres in Freeport, Brazoria County, Texas. The facility historically was used as a barge cleaning and servicing facility. Operations included draining and pumping of chemical barges to remove product heels, which then were stored in tanks and sold as product. Three surface impoundments received wash water from the cleaning of barges and other transport vessels that carried organic substances including alcohols, ketones, and crude oil. Waste wash water was hard-piped to the surface impoundments for evaporation and separation. The surface impoundments were certified closed in August 1982 following removal of the liquids and sludges, solidification of the remaining sludge with soil, and capping with three feet of clay cover and a hard wearing surface. Some sludge reportedly remained in one of the surface impoundments at the time of closure. The Site includes, in addition to the three buried and backfilled surface impoundments, areas of contaminated soil and releases to surface water and ground water.

The Site lies within the 100-year coastal flood plain along the north bank of the Intracoastal Waterway between Oyster Creek to the east and the Old Brazos River Channel and the Dow Barge Canal to the west. The southern part of the Site drains to the south where it enters the Intracoastal Waterway. The surface water migration pathway extends in all directions within contiguous surface water bodies, since these surface water bodies are tidally influenced. Surface water flows eastward into Drum Bay, Christmas Bay, Bastrop Bay, and Galveston Bay. Galveston Bay is the seventh largest estuary in the United States and is designated as a National



Estuary as part of the National Estuaries Program. In addition, Christmas Bay is designated as the Christmas Bay Coastal Preserve of the Texas Coastal Preserve Program, and harbors eight endangered or threatened species including the Bald Eagle, Brown Pelican, Peregrine Falcon, Whooping Crane, Piping Plover, Reddish Egret, White-faced Ibis, and Green Sea Turtle. The 12,199-acre Brazoria National Wildlife refuge is located to the south of Bastrop Bayou and contains the habitats of three state-threatened species, including the Wood Stork, White-tailed Hawk, and the Swallow-tailed Kite. A wetland area is located approximately 500 feet south of the Site across the Intracoastal Waterway. This area is classified as intertidal estuarine, emergent, persistent, and regularly flooded.

Underlying the Site is the Chicot/Evangeline aquifer system. This aquifer system is a major source of municipal and smaller public water supply systems in the Freeport area. The largest public water supply system within four miles of the Site is that of the City of Freeport, which supplies approximately 11,300 people.

The Site was added to the National Priorities List on May 30, 2003, based on evidence that hazardous substances, including semi-volatile organic compounds, lead, zinc, and pesticides have migrated from the facility to the Intracoastal Waterway, which is considered a fishery. The hazardous substances released from the facility pose a threat to nearby drinking water supplies and downstream sensitive environments, and have impacted fisheries downstream of the facility.

### **INFORMATION REQUEST**

The EPA is seeking your cooperation in providing additional information you may have about the Site as explained further in the enclosed Information Request (Enclosure "B"). Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA has broad information gathering authority which allows EPA to require persons to furnish information and documents relating to the history of the ownership and operation of the site, waste generation at the site, and waste disposal practices at the site. Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 CFR 2.310(h), even if you assert that all or part of the information is confidential business information. Please be advised that EPA intends to disclose all responses to this Information Request to one or more of its private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request.

While EPA seeks your cooperation in this investigation, compliance with the Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under Federal law. **Your written response to this Request For Information must be sent to Ms. Janice Bivens at the address given below within thirty (30) days of receipt of this request. Under section 104(e)(5)(B)(ii) of CERCLA, the EPA may request a court to impose penalties of up to \$27,500 per day for non-compliance with this Information Request.** Although you may consider some of the information EPA is requesting to be confidential, please be aware that you may not withhold the

information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures outlined in Enclosure B (Information Request, Gulfco Marine Maintenance Site), including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist EPA in its investigation of the Site or may be responsible for the contamination found at the Site, that information should be submitted along with your response to this Information Request.

### **PRP RESPONSE AND EPA CONTACTS**

Please direct your response to this letter and questions regarding the matters in this letter to:

Ms. Janice Bivens  
Enforcement Officer  
Superfund Cost Recovery Section (6SF-AC)  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
Telephone: (214) 665-6717  
Fax: (214) 665-6660  
Email: [bivens.janice@epa.gov](mailto:bivens.janice@epa.gov)

If you or your attorney have legal questions pertaining to this matter, please direct them to:

Ms. Barbara A. Nann  
Superfund Attorney (6RC-S)  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Telephone: (214) 665-2157  
Fax: (214) 665-6460  
Email: [nann.barbara@epa.gov](mailto:nann.barbara@epa.gov)

Questions concerning the technical aspects of the Site should be directed to:

Mr. Gary Miller  
Remedial Project manager (RPM)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Telephone: (214) 665-8318  
Fax: (214) 665-6660  
Email: miller.garyg@epa.gov

We ask your cooperation in providing this information to EPA. Thank you for your time and attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Myron O. Knudson". The signature is fluid and cursive, with the first name "Myron" and last name "Knudson" clearly distinguishable.

Myron O. Knudson, P.E.  
Director  
Superfund Division

Enclosures (2)